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**JUN 19 2009**

**OFFICE OF PETITIONS**

In re Application of :  
Byers, et al. : DECISION ON PETITION  
Application No. 10/796,727 :  
Filed: March 9, 2004 :  
Atty. Dkt. No: MP0787 :

This decision is in response to the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181, filed May 15, 2009.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **GRANTED**.

The application was held abandoned July 16, 2008 for failure to timely submit a proper reply to the final Office action mailed April 15, 2008. The final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed November 19, 2008. A petition under 37 CFR 1.181 was filed December 29, 2008 and dismissed March 16, 2009.

Petitioners continue to assert non-receipt of the final Office action. Petitioners have included, *inter alia*, a copy of the master docket records which purport to establish non-receipt of the final Office action.

The showing required to establish non-receipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office

action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The instant petition has been carefully reviewed and found in compliance with the procedure for establishing non-receipt of an Office communication set forth at MPEP 711.03(c).

In view thereof, the petition is hereby GRANTED. Moreover, the holding of abandonment is withdrawn and the Notice of Abandonment is hereby vacated.

This application is being returned to Group Art Unit 2186 for re-mailing of the final Office action. The time period for reply will be set in the newly mailed final Office action.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

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